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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053969
Party	Defendant Wayne C. Wallace
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Date	06/09/2011
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Travelpro International, Inc.
Petitioner,

v.

Wayne C. Wallace,
Respondent.

Cancellation No. 92053969

Registration No. 3206792

Mark:



ANSWER

COMES NOW Wayne C. Wallace ("Respondent"), by and through Counsel, Erik M. Pelton & Associates, PLLC, and Answers the Petition to Cancel Registration No. 3206792 filed by Travelpro International, Inc. (hereinafter "Petitioner"), and assigned Cancellation No. 92053969.

Respondent hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Petition to Cancel, as follows:

1. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition to Cancel, and therefore denies same.
2. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Petition to Cancel, and therefore denies same.
3. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Petition to Cancel, and therefore denies same.
4. Denied.

5. Respondent is without information sufficient to form a belief as to the truth of the ownership allegations in paragraph 5 of the Petition to Cancel, and therefore denies same. The remaining allegations are admitted to the extent they are supported by the records of the USPTO.

6. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Petition to Cancel, and therefore denies same.

7. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Petition to Cancel, and therefore denies same.

8. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Petition to Cancel, and therefore denies same.

9. The records of the USPTO regarding the '792 Registration speak for themselves.

10. Denied.

11. Respondent is without information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Petition to Cancel, and therefore denies same.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Respondent is without information sufficient to form a belief as to the truth of the ownership allegations and the common law priority allegations in paragraph 16 of the Petition to Cancel, and therefore denies the paragraph.

17. Admitted.

18. Denied.

19. Denied.

AFFIRMATIVE DEFENSES

FURTHERMORE, Respondent sets forth the following in support of its defense:

20. Respondent's mark is not the same as or confusingly similar to the Petitioner's alleged CREW mark or Petitioner's alleged CREW family of marks.

21. Respondent's mark features a double-entendre.

22. Respondent's mark is a play on words and would immediately be recognized as such by consumers.

23. The meaning of the wording in Respondent's mark is enhanced by the design elements in Respondent's mark.

24. Respondent's mark has a very different meaning compared with Petitioner's alleged CREW mark and Petitioner's alleged CREW family of marks.

25. Respondent's mark has a very different appearance compared with Petitioner's alleged CREW mark and Petitioner's alleged CREW family of marks.

26. Respondent's mark has a very different commercial impression compared with Petitioner's alleged CREW mark and Petitioner's alleged CREW family of marks.

27. Petitioner's use of CREW is descriptive or highly suggestive term in connection with Petitioner's goods.

28. The Trademark Trial and Appeal Board ("TTAB") previously affirmed refusal of Petitioner's prior application for the mark FLIGHT CREW in connection with luggage, Serial Number 76030904, finding the mark merely descriptive. *See* TTAB opinion at <http://ttabvue.uspto.gov/ttabvue/v?pno=76030904&pty=EXA&eno=12>.


29. The TTAB, in the appeal of Serial Number 76030904, held that "There is ample evidence in the record to support the conclusion that the term FLIGHT CREW describes a


characteristic or feature of applicant's luggage, namely, luggage with the array of features favored by professional airline flight crew members." *Id.*

30. Petitioner's prior application Serial No. 77459182 for the mark CREW was refused by the Examining Attorney as merely descriptive pursuant to Trademark Act Section 2(e)(1). Following the refusal, Petition expressly abandoned application Serial No. 77459182.

31. CREW is a highly diluted term in connection with Petitioner's goods.

32. CREW is contained in the following third party U.S. trademark registrations featuring goods or services in the field of travel and/or luggage.

<u>Mark</u>	<u>Reg. Number</u>	<u>Relevant Goods or Services</u>
ADVENTURE CREW	3168481	Travel clubs; conducting and arranging travel tours
NAUTI-CREW	3261897	Resort hotels, resort lodging services, making hotel reservations for others, travel agency services, namely, making reservations and bookings for temporary lodging, ...
	3479414	Retail store services, on-line retail store services, and catalog ordering services featuring luggage, ...
CREWRATES.COM YOUR CREW. YOUR RATE. YOUR CONTROL.	3381083	Travel booking agencies
CREWGEAR	2692719	Retail and wholesale store services, via telephone, mail order, showroom, and Internet catalog featuring items relating to the aviation profession or of interest to aviation enthusiasts, including uniform components, publications, accessories for foreign and domestic travel, organizers, flight bags, catalog cases, electronics, maps and guides, apparel, sunglasses, jewelry luggage....
CRUISE CREW	1456868	Travel agency services
CREW TAGS	3494341	Luggage tags

CREW CAREERS BUILDING OPPORTUNITIES	3224349	All purpose carrying bags
J. CREW	3870032	Handbags, messengers bags, duffel bags
	3390505	Leather zip fanny packs

33. Respondent began use of its mark in commerce more than four years ago.

34. Respondent's mark was published for Opposition more than five years ago.

35. Respondent's mark was registered by the USPTO more than four years ago.

36. Upon information and belief, there has been no actual confusion between Respondent's mark and any of Petitioner's alleged marks.

37. Respondent's mark and the Petitioner's alleged CREW marks are not likely to cause confusion, mistake or deception among purchasers as to the source of Petitioner's goods.

38. Respondent's mark and the Petitioner's alleged CREW family of marks are not likely to cause confusion, mistake or deception among purchasers as to the source of Petitioner's goods.

39. Petitioner is not likely to be damaged by continued registration or use of Respondent's mark.

40. Upon information and belief, Petitioner has failed to enforce its alleged CREW mark or its alleged CREW family of marks against third party users of CREW in the fields of luggage and travel.

41. Petitioner's claim is barred by laches.

42. Petitioner's claim is barred by acquiescence.
43. Petitioner's claim is barred by unclean hands and other equitable principles.
44. Respondent is a small business that is harmed by Petitioner's litigation tactics wherein Petitioner has attempted to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of Petitioner's rights in its alleged marks.

Respondent hereby appoints Erik M. Pelton, a member of the Bars of the State of New Jersey and the District of Columbia, and Mark L. Donahey, a member of the Bar of the Commonwealth of Virginia, at the firm of:

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to act as attorneys in the matter of the cancellation identified above, to prosecute said petition to cancel, to transact all business in the Patent and Trademark Office connected with the cancellation, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

WHEREFORE, Respondent prays that the Trademark Trial and Appeal Board deny the Petition to Cancel and allow continued registration of Respondent's mark in Registration No. 3206792 in the United States Patent and Trademark Office.

Dated this 9th day of June, 2011.




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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of ANSWER has been served on the following by delivering said copy on June 9, 2011, via First Class Mail, to counsel for Petitioner at the following address:

JENNIFER P RABIN
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By:  _____
Erik M. Pelton, Esq.